Industrial Experimental and Manufacturing Company and Industrial Experimental Technologies, LLC *and* Local 985, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–41803

October 25, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Upon a charge filed by the Union on February 26, 1999, and amended charges filed by the Union on April 29 and June 9, 1999, the General Counsel of the National Labor Relations Board issued a complaint on June 24, 1999, against Industrial Experimental and Manufacturing Company (IEMC or the Respondent), and Industrial Experimental Technologies, LLC, alleging that Respondent IEMC has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, Respondent IEMC failed to file an answer.

On September 13, 2000, the General Counsel filed a Motion for Partial Summary Judgment with the Board. On September 15, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Respondent IEMC filed no response. The allegations in the motion are therefore undisputed.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] The General Counsel's motion states that in an order dated August 31, 2000, the Regional Director approved a non-Board adjustment of the complaint allegations between the Union and Respondent Industrial Experimental Technologies, LLC (IET). Thus, the General Counsel's motion does not involve Respondent IET.

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Industrial Experimental and Manufacturing Company (IEMC), a Michigan corporation, with an office and facility at 3199 Lapeer Road, Auburn Hills, Michigan, has been engaged in the business of producing prototype stampings. During the 12-month period ending January 1, 1999, Respondent IEMC, in conducting its business operations described above, sold and shipped goods valued in excess of $50,000 from points located within the State of Michigan directly to customers located outside the State of Michigan. We find that Respondent IEMC is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by Respondent IEMC at the Auburn Hills facility, but excluding sales, accounting, personnel and industrial relations, superintendents, general foremen, assistant foremen, and all supervisors, confidential employees, time study persons, plant protection employees, and clerical employees.

At all material times, Local 985, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, has been the designated collective-bargaining representative of the unit set forth above and has been recognized as such representative by Respondent IEMC. This recognition has been embodied in a series of collective-bargaining agreements, the most recent of which is effective by its terms for the period from January 30, 1998, to January 30, 2001.

Since at least January 30, 1998, and at all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The collective-bargaining agreement referred to above contains terms and conditions of employment, including, among other things, wages; vacation pay; payments for employee health and dental insurance benefits; contributions into an employee retirement plan, a pension program, and a 401(k) program; and dues checkoff.

Since about September 1998, and continuing to date, Respondent IEMC has repudiated the collective-bargaining agreement referred to above by, among other things, refusing to pay wages and accrued vacation benefits, refusing to make payments into the employee health

insurance plan, the 401(k) plan, and the pension plan; failing to remit money deducted from unit employees' earnings into savings and investment plans, and credit union accounts; and failing to remit to the Union dues checked off from employees' pay.

The subjects set forth above relate to wages and terms and conditions of employment and are mandatory subjects for the purpose of collective bargaining. Respondent IEMC engaged in the conduct described above without the consent of the Union.

CONCLUSION OF LAW

By the acts and conduct described above, Respondent IEMC has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent IEMC has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the purposes of the Act. Specifically, having found that Respondent IEMC has violated Section 8(a)(1) and (5) of the Act, we shall order Respondent IEMC to comply with the terms of the parties' collective-bargaining agreement effective from January 30, 1998, to January 30, 2001, including by paying contractual wages and accrued vacation benefits; by making payments into the employee health insurance plan, the 401(k) plan, and the pension plan; by remitting money deducted from unit employees' earnings into savings and investment plans, and credit union accounts; and by remitting to the Union dues checked off from employees' pay.

We also shall order Respondent IEMC to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the repudiation of the collective-bargaining agreement in September 1998, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order Respondent IEMC to make all contractually required delinquent contributions owed to the various contractual fringe benefit funds since September 1998, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Further, Respondent IEMC shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[2] Finally, we shall order Respondent IEMC to remit to the Union dues deducted from employees' pay since September 1998, as required by the 1998–2001 agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Industrial Experimental and Manufacturing Company, Auburn Hills, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with Local 985, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO as the exclusive collective-bargaining representative of the employees in the unit set forth below, by repudiating its 1998–2001 collective-bargaining agreement with the Union, including by unilaterally refusing to pay wages and accrued vacation benefits; refusing to make payments into the employee health insurance plan, the 401(k) plan, and the pension plan; failing to remit money deducted from unit employees' earnings into savings and investment plans, and credit union accounts; and failing to remit to the Union dues checked off from employees' pay, as required by the collective-bargaining agreement:

> All full-time and regular part-time production and maintenance employees employed by Respondent IEMC at the Auburn Hills facility, but excluding sales, accounting, personnel and industrial relations, superintendents, general foremen, assistant foremen, and all supervisors, confidential employees, time study persons, plant protection employees, and clerical employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms and conditions of the 1998–2001 collective-bargaining agreement with the Union, including the provisions concerning wages and accrued vacation benefits; the employee health insurance plan; the 401(k) plan; the pension plan; savings and investment plans; credit union accounts; and dues checkoff.

(b) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[3] In view of the complaint allegation that the Respondent "substantially ceased operations and terminated its employees" on about January 8, 1999, we shall provide for mailing of the notice.

result of the repudiation of the collective-bargaining agreement in September 1998, as set forth in the remedy section of this decision.

(c) Make all contractually required delinquent contributions owed to the various contractual fringe benefit funds since September 1998, and reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in the remedy section of this decision.

(d) Remit to the Union the dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by employees and which have not been remitted since September 1998, with interest as set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by Respondent IEMC's authorized representative, copies of the attached notice marked "Appendix"[4] to all current employees and former employees employed by Respondent IEMC at any time since September 1998.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent IEMC has taken to comply.

Dated, Washington, D.C. October 25, 2000

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to mail and abide by this notice.

WE WILL NOT refuse to bargain collectively and in good faith with Local 985, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO as the exclusive collective-bargaining representative of the employees in the unit set forth below, by repudiating our 1998–2001 collective-bargaining agreement with the Union, including by unilaterally refusing to pay wages and accrued vacation benefits; by refusing to make payments into the employee health insurance plan, the 401(k) plan, and the pension plan; by failing to remit money deducted from unit employees' earnings into savings and investment plans, and credit union accounts; and by failing to remit to the Union dues checked off from employees' pay, as required by the collective-bargaining agreement:

> All full-time and regular part-time production and maintenance employees employed by us at the Auburn Hills facility, but excluding sales, accounting, personnel and industrial relations, superintendents, general foremen, assistant foremen, and all supervisors, confidential employees, time study persons, plant protection employees, and clerical employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of the 1998–2001 collective-bargaining agreement with the Union, including the provisions concerning wages and accrued vacation benefits; the employee health insurance plan; the 401(k) plan; the pension plan; savings and investment plans; credit union accounts; and dues checkoff.

WE WILL make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of our repudiation of the collective-bargaining agreement in September 1998, with interest.

WE WILL make all contractually required delinquent contributions owed to the various contractual fringe benefit funds since September 1998, and reimburse unit employees for any expenses ensuing from our failure to make the required contributions, with interest.

WE WILL remit to the Union the dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations executed by employees and which have not been remitted since September 1998, with interest.

INDUSTRIAL EXPERIMENTAL AND
MANUFACTURING COMPANY

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."